UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>06 August 2007</u>.
2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-35</u> is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) <u>1-35</u> is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on <u>9/19/2003</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a) ☐ All   b) ☐ Some * c) ☐ None of:

   1. ☐ Certified copies of the priority documents have been received.
   2. ☐ Certified copies of the priority documents have been received in Application No. _____.
   3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-35 are presented for examination.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3.   Claims 16-18, and 34-35 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4.   Claims 16-18, and 34-35 are rejected because the claimed invention, appearing to be comprised of <u>software alone</u> without claiming associated <u>computer hardware</u> required for execution, is not supported by either a specific and substantial asserted utility (i.e., transformation of data) or a well established utility (i.e. a practical application).

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.   Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Boukobza et al. (US Pat No. 6,122,664) in view of Putzolu et al. (US Pat No. 6,681,243,

hereinafter Putzolu).

7.   Regarding claim 1, Boukobza teaches a method for gathering operational metrics

within a grid environment comprising the steps of:

       identifying a host, wherein said host is a software object operating in a grid of

said grid environment (col 2 lines 20-37);

       associating a ghost agent within said grid with said host, wherein said ghost

agent is configured to replicate and record at least one action of said host within said

grid (col 2 lines 29-31, wherein each agent comprises a plurality of specific modules

specific to the different object type or to a particular domain, and col 6 lines 30-34;

wherein log files or the actions of each node are monitored);

       determining operational metrics for at least a portion of said recorded at least one

action (col 2 lines 52-55);

       recording said operational metrics (col 5 lines 23-25).

8.   Boukobza does not explicitly disclose moving said host within said grid

environment and responsively moving said ghost agent in accordance with movement

of said host.

9.   Putzolu teaches moving said host within said grid environment (col 3 lines 59-61,

col 4 lines 17-23). It would have been obvious to one of ordinary skill in the art at the

time of the invention to move the host within the grid environment and moving a

monitoring agent in accordance with movement of said host in order to allow for easier

and more effective management of a network as taught by Putzolu (col 3 lines 48-54).

10.   Regarding claims 2-3, Boukobza teaches that the operational metrics comprise

performance metrics or load metrics (col 2 lines 46-55).

11.   Regarding claim 4, Boukobza teaches identifying a location for logging data that

is external to said ghost agent; and, conveying said recorded operational metrics to said

identified location (col 6 lines 30-34; wherein log files or the actions of each node are

monitored).

12.   Regarding claim 5, Boukobza teaches generating test input based in part upon

said recorded operational metrics (col 3 lines 30-39).

13.   Regarding claim 6, Boukobza and Putzolu do not explicitly teach that said ghost

agent is deployed within a production segment of said grid environment, said method

further comprising the steps of:

    deploying at least one ghost agent within a test segment of said grid

environment; and,

    recording operational metrics relating to tests conducted within said test segment

using said deployed at least one ghost agent.

14.   However, it would have been obvious to one of ordinary skill in the art at the time

of the invention, to deploy a ghost agent in a test environment and record operation

metrics. One would be motivated to perform testing on a software object in a testing

platform to test for bugs and errors.

15.   Regarding claim 7, Boukobza teaches: selecting a plurality of hosts; and,

        for each selected host, repeating said associating step, said recording step, and

said moving step (col 4 line 36 to col 5 line 17).

16.   Regarding claim 8, Boukobza teaches a method for determining operational

metrics within a grid environment comprising the steps of:

        identifying a transaction comprising a plurality of actions (col 2 lines 13-19,

wherein the execution of an application is performed on multiple nodes);

        executing said actions within different grids of said grid environment, by at least

one host (col 2 lines 13-19, wherein the execution of an application is performed on

multiple nodes);

        replicating said actions within at least one ghost agent (col 5 lines 13-18);

        recording data relating to said replicated actions (col 6 lines 30-34); and,

determining operational metrics for said transaction based upon said recorded data (col

5 lines 23-29).

17.   Boukobza does not explicitly disclose moving said host within said grid
environment and responsively moving said ghost agent in accordance with movement
of said host.

18.   Putzolu teaches moving said host within said grid environment (col 3 lines 59-61,
col 4 lines 17-23). It would have been obvious to one of ordinary skill in the art at the
time of the invention to move the host within the grid environment and moving a
monitoring agent in accordance with movement of said host in order to allow for easier
and more effective management of a network as taught by Putzolu (col 3 lines 48-54).

19.   Regarding claims 9-10, Boukobza teaches that the operational metrics comprise
performance metrics or load metrics (col 2 lines 46-55).

20.   Regarding claim 11, Boukobza does not explicitly teach that different locations
exist within different grids of said grid environment. However, it would have been
obvious to one of ordinary skill in the art at the time of the invention, that the nodes of
Boukobza's system, could be placed in different grids. One would be motivated by the
desire to gather operational metrics from different areas.

21.   Regarding claims 12-15, Boukobza does not teach executing said actions within
a production or test segment of said grid environment, wherein said transaction is
executed for an application, said determining step further comprising the step of:

determining said operational metrics while actions for different applications are being

executed within said production or test segment.

22.   It would have been obvious to one of ordinary skill in the art at the time of the

invention to include running a transaction in a production or test segment and

determining operational metrics for the transactions. One would be motivated by the

desire to first perform the method of Boukobza first in a testing environment to test for

errors and migrate the system to a production environment once it is ready to go online.

23.   Regarding claim 16, Boukobza teaches a ghost agent as claimed according to

claim 1.

24.   Regarding claim 17, Boukobza teaches a ghost identifier configured to identify

said ghost agent to components within said grid environment (col 5 lines 13-17).

25.   Regarding claim 18, Putzolu teaches:

means for disassociating said ghost agent from said host; and,

means for associating said ghost agent with a different host (col3 lines 59-61).

26.   Regarding claims 19-33, they are machine-readable storage claims of claims 1-

15 above. Therefore they are rejected for the same reasons as claims 1-15 above.

27.   Regarding claim 34, it is the system claim of claim 1 above. Therefore it is

rejected for the same reasons as claim 1 above.

28.   Regarding claim 35, it is the system claim of claim 8 above. Therefore it is

rejected for the same reasons as claim 8 above.

Response to Arguments

29.   Applicant's arguments filed 8/6/2007 have been fully considered but they are not

persuasive.

30.   Applicant argues on page 17, "However, Putzolu fails to disclose associating with

and copying the movement of another software object, as in the present invention.

Putzolu instead discloses that agents move in response to demands on device

resources in order to travel to the appropriate network device and make any necessary

adjustments to improve network performance (see, e.g., col. 11, lines 49-53). In

Putzolu, agents are not associated with software objects. At the most, such agents are

associated with a node, as the agent can be configured to reside at a particular node

according to a user command (see, e.g., col. 5, lines 9-19). However, nowhere does

Putzolu disclose that such agents can be associated with another software object or

that they would follow another software object automatically. In Putzolu, movement is

instead based on responding to commands or problems in the network... As such, the

agent of Putzolu cannot replicate and record actions for gathering operational metrics of the actions of a host since agents and software objects do not travel together."

31.   . Examiner disagrees. Interpreting Putzolu another way, the agents of Putzolu are the software objects in Applicant's invention (col 3 lines 59-61). Putzolu is not relied upon to teach that Putzolu's agents associate themselves with software objects, since Putzolu's agents are the software objects.

32.   Boukobza teaches a method of monitoring nodes. Boukobza teaches that specific modules are created for monitoring certain type of objects (Boukobza col 2 line 30-38). Since Putzolu teaches that software objects are movable, it would have been obvious to one of ordinary skill to include specific modules as taught by Boukobza for monitoring the agents in Putzolu. The association of Boukobza's modules to Putzolu's software objects, teaches Applicant's invention.

Conclusion

33.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

34.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric C. Wai whose telephone number is 571-270-1012. The examiner can normally be reached on Mon-Thurs, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng - Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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